

REMARKS

Claims 2-6 and 9-13 remain pending in this application. Claims 2-6 and 9-12 have been amended to more positively recite the surface configuration of the claimed prosthesis. Support for these amendments may be found, for example, in the specification at page 5, lines 17-24.

Claims 11, 2-6, 9 and 13 are rejected under 35 USC 103(a) on Zubok (US 2004/0176850) in view of Errico (US 2003/0069586). Claim 10 is rejected under 35 USC 103(a) on Zubok in view of Michelson (US 6,083,228). Claim 12 is rejected under 35 USC 103(a) on Zubok in view of Gerbec (US 2003/0130739). These rejections are respectfully traversed.

The present invention is directed to an intervertebral joint prosthesis for implantation into an intervertebral space between adjacent cervical vertebral bodies. The claimed prosthesis as amended has an upper cover plate with an upper surface and a lower cover plate with a lower surface. The upper surface and the lower surface bear on corresponding end plates of the adjacent vertebral bodies. The lower surface has a central extent and a lateral extent in a coronal plane. The lateral extent extends from the central extent to a lateral side of the lower cover plate. The central extent protrudes downward beyond the lateral extent. The lateral extent has an incline relative to a transverse plane. The coronal plane and the transverse plane are taken relative to an orientation of the prosthesis in an implanted position.

Neither Zubok nor Errico teaches or suggests a lower cover plate surface having an inclined lateral extent extending from a protruding central extent to the side of the cover plate as claimed.

For instance, as shown in FIG. 5 of Zubok below:

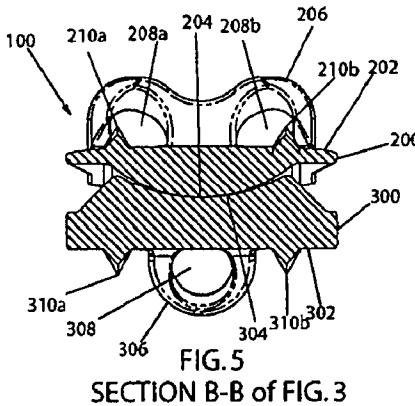


FIG.5
SECTION B-B of FIG. 3

implant 100 has lower element 300. The lower surface of element 300 has no inclination except for spikes 310a and 310b. Because the lateral portions of the lower surface lying between the spikes and the sides of element 300 have no inclination, the lower surface does not have an *inclined* lateral extent that extends to the side of the cover plate as claimed. Further, because the central portion of the lower surface between the spikes lies along the same transverse plane as the lateral portions of the lower surface beyond the spikes, the lower surface does not have a central extent that protrudes downward beyond the lateral extent as claimed.

Additionally, as shown in FIG. 1a of Errico below:

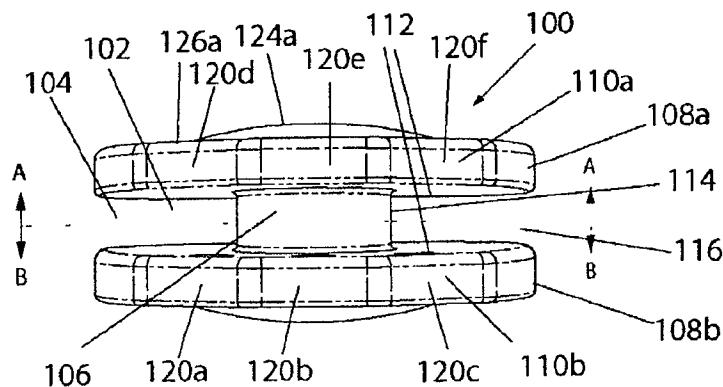


FIG.1a

artificial disc 100 has baseplate 108b. The central portion of the lower surface of baseplate 108b has a convex dome. However, the lateral portion of the lower surface extending from the domed

central portion to the side of baseplate 108b has no inclination. Hence, the lower surface does not have an *inclined* lateral extent extending from a protruding central extent to the side of the cover plate as claimed.

Accordingly, because Zubok and Errico do not individually or together teach or suggest the elements required by the claims, the rejections of claims 11, 2-6, 9 and 13 should be withdrawn. Further, the fundamental deficiencies of Zubok and Errico are not compensated for by the additional references of Michelson and Gerbec, which similarly fail to teach or suggest a lower cover plate surface having an inclined lateral extent extending from a protruding central extent to the side of the cover plate as claimed.

In view of the above, early action allowing claims 2-6 and 9-13 is solicited.

In the event the Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **246472008500**.

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Respectfully submitted,

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